

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

_____)	
MARJORIE FERRELL, et al.,)	Civil Action No. C-1-01-447
)	
Plaintiffs,)	Judge Sandra S. Beckwith
)	Magistrate Judge Timothy S. Hogan
v.)	
)	
WYETH-AYERST LABORATORIES,)	
INC., et al.,)	
)	
Defendants.)	
_____)	

**PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
PROPOSED SETTLEMENT AND APPROVAL OF NOTICE PROGRAM**

Plaintiffs, by their attorneys, hereby move pursuant to Rule 23(e), Fed. R. Civ. P., for: (i) preliminary approval of a proposed class action settlement; (ii) approval of the form and manner of notice to the Class; and (iii) the scheduling of a fairness hearing to consider final approval of the settlement. In support thereof, Plaintiffs state as follows:

1. After hard-fought litigation and many months of very difficult negotiations, Plaintiffs and Defendants Wyeth Pharmaceuticals (formerly Wyeth-Ayerst Laboratories, Inc.) and Wyeth (formerly American Home Products Corporation) (collectively "Defendants" or "Wyeth") have signed a Settlement Agreement, attached hereto, which includes a recovery of \$1,300,000 in cash. Because the administrative costs associated with distributing the proceeds of this settlement to Class members¹ would exhaust the funds, the settlement provides for a *cy pres*

¹ The Class is comprised of five subclasses certified by the Court that consists of the following:

1. A subclass of individual consumers in the states of Arizona, Iowa,

distribution for the benefit of the Class. The settlement is within the range of possible approval to justify notification to the Class of its content and to proceed to a fairness hearing. A *[Proposed] Order Granting Preliminary Approval of Settlement, Directing Notice to the Class, and Scheduling Fairness Hearing* (“Preliminary Approval Order”) is attached as Exhibit C to the Agreement.

2. Plaintiffs submit a proposed Plan of Notice, which is attached as Exhibit A to the *Declaration of Patrick Cafferty in Support Plaintiffs’ Plan of Notice*. A proposed form of *Notice of Pendency and Proposed Settlement of Class Action, Motion for Costs and Settlement Hearing* (“Notice”) is attached as Exhibit C(2) to the Settlement Agreement. Pursuant to the Plan of Notice, notice will be published in a variety of periodicals targeted to reach Class members and mailed directly to a database of third-party payors.

Kansas, Maine, Michigan, Minnesota, Mississippi, New Mexico, North Carolina, North Dakota, South Dakota, Tennessee, West Virginia and Wisconsin.

2. A subclass of third-party payors in the states identified immediately above, represented by Plaintiffs United Food & Commercial Workers Midwest Health Benefits Fund (“UCFW”), and Twin Cities Bakery Workers Health & Welfare Fund (“TCBW”).

3. A subclass of consumers in the states of Florida, Vermont and Massachusetts, represented by Plaintiff Marjorie Ferrell.

4. A subclass of third-party payors in the states of Florida, Vermont, and Massachusetts. UFCW alleges that it has members in Florida, and the Court finds that UFCW is an adequate representative for this subclass.

[5]. A subclass of third-party payors in the state of Nevada.

Order of February 2, 2005 [Doc. No. 118] at 8. “The Court excluded from all subclasses any consumer who paid a fixed cost, or ‘flat co-pay,’ to purchase Premarin, as well as any consumer who was fully insured or fully reimbursed for such purchases.” *Id.* at 2. Plaintiffs were unable to identify a representative for the subclass of consumers in Nevada by the Court’s deadline.

3. Plaintiffs request the appointment of Complete Claim Solutions, Inc. as the Notice Administrator. Responsibilities of the Notice Administrator include the following: (a) establishing a post office box and toll-free phone number (to be included in the Notices to Class members); (b) disseminating notice to Class members; (c) establishing a website for purposes of posting Notices, the Agreement and related documents; and (d) accepting and maintaining documents sent by Class members, including exclusion requests.

4. Plaintiffs respectfully submit that the proposed Plan of Notice meets the requirements of Rule 23, due process and constitutes due, adequate and sufficient notice to all persons entitled to receive notice. Accordingly, the Court should approve the form and content of the Notice and Summary Notice, and direct Class Counsel to implement the proposed notice program.

5. Plaintiffs respectfully request that the Court schedule a Fairness Hearing and establish deadlines for, *inter alia*, requests for exclusion from the Class, filing objections to the proposed Settlement, filing exclusion forms, and filing an application for costs.

WHEREFORE, Plaintiffs respectfully request that the Court enter its order: (i) GRANTING preliminary approval to the Settlement pursuant to Rule 23(e); (ii) SCHEDULING a Fairness Hearing for a date on or after May 7, 2007 and establishing all related deadlines²; and (iii) DIRECTING that notice be provided to Class members in accordance with the Plan of Notice.

² The latest a recommended periodical goes on sale is March 27, 2007. Accordingly, the parties recommend an exclusion deadline of April 27, 2007.

Dated: January __, 2007

Respectfully submitted,

By: /s/ Janet G. Abaray
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